

**Ordinance No. 11-030**

**An ordinance prohibiting the use of and contact with designated groundwater from beneath certain property known as 800 Orthopedic Way and 813 and 815 Secretary Drive within the City of Arlington, Texas, and adjacent right-of-way, to facilitate certification of a Municipal Setting Designation of the property by the Texas Commission on Environmental Quality pursuant to the Texas Health and Safety Code; providing for a fine of up to \$2,000 for each violation of the ordinance; providing this ordinance be cumulative; providing for severability, governmental immunity, injunctions, publication and an effective date.**

WHEREAS, Texas Health and Safety Code Chapter 361, Subchapter W (the "MSD Legislation") authorizes the Texas Commission on Environmental Quality (TCEQ) to certify Municipal Setting Designations for properties upon receipt and approval of a properly submitted application to TCEQ; and

WHEREAS, the Texas Legislature, in enacting the MSD Legislation, found that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate a Municipal Setting Designation (MSD) advances a substantial and legitimate state interest where the quality of the groundwater subject to the designation is an actual or potential threat to human health; and

WHEREAS, as a part of the application process for an MSD, the applicant is required to provide documentation that the property for which designation is sought is subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; and

WHEREAS, as a part of the application process for an MSD, the applicant is required to provide documentation that the property for which designation is sought is supported by an ordinance adopted by this City Council; and

WHEREAS, Arlington Orthopedic Associates, PA will submit an application to TCEQ for certification of an MSD for property within the city limits of the City, commonly known as 800 Orthopedic Way and 813 and 815 Secretary Drive, the legal description of which is set forth in Exhibit "A" attached hereto and made a part hereof, together with the full 800 Orthopedic Way and 815 Secretary Drive right-of-way fronting on the property set forth in Exhibit "A" (together, the "MSD Property"), provided that the ordinance being considered herein is passed; and

WHEREAS, the Applicant has certified that:

- 1) the purpose of its application is to conduct environmental investigation, cleanup and restoration activities in a more efficient and cost-effective manner;

- 2) it will seek to obtain a determination from TCEQ that regulatory closure is attained at the MSD Property;
- 3) as part of such application, the Applicant has submitted a statement to TCEQ regarding the type of known contamination in the groundwater beneath the MSD Property; and
- 4) notice of the application for the certification of MSD Property has been provided to each owner of a registered private water well that is located not more than five miles from the boundary of the MSD Property; and

WHEREAS, a public drinking water supply system exists that satisfies the requirements of Texas Health and Safety Code Chapter 341 for the MSD Property and property within one-half mile of the MSD Property; and

WHEREAS, the City staff have reviewed and evaluated the subject MSD application; and

WHEREAS, after public hearing, the City Council believes that it is in the best interest of the public and the City to facilitate the efforts to secure an MSD and TCEQ closure documentation from the TCEQ by passage of this Ordinance; Now therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That all of the declarations and findings contained in the preambles of this Ordinance are made a part hereof and shall be fully effective as a part of the ordained subject matter of this Ordinance.

2.

That the City Council finds that it is in the best interest and welfare of the public to facilitate TCEQ's certification of an MSD for the MSD Property, as well as TCEQ closure documentation.

3.

That, upon and after the effective date of this Ordinance, the drilling of wells and the use of designated groundwater for any purpose, including but not limited to any potable purpose, excepting only: (i) wells used as monitoring wells for the collection of groundwater samples for chemical or biological laboratory analysis; and (ii) wells used for the purpose of remediation of soil or groundwater contamination, is hereby prohibited on or from any portion of the MSD Property.

4.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

5.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

6.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

7.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

8.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

9.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

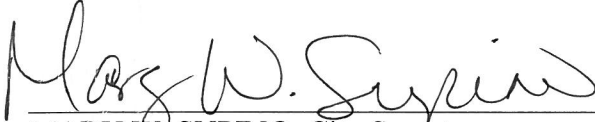
10.

This ordinance shall become effective immediately upon second publication.

PRESENTED AND GIVEN FIRST READING on the 10th day of May, 2011, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 24th day of May, 2011, by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

  
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ROBERT N. CLUCK, Mayor

ATTEST:

  
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MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:  
JAY DOEGEY, City Attorney

BY   
\_\_\_\_\_

MSD11-1

EXHIBIT "A"

The legal description of 800 Orthopedic Way and 813 and 815 Secretary Drive located south of Orthopedic Way and east of South Cooper Street is all of Lots 2A and 2B, Block 2, Central Plaza Addition and all of the remainder of Lot 1AR, Block 1, 157 South Addition, an addition to the City of Arlington, Tarrant County, Texas.

BEING 5.598 acres of land situated in the A. Newton survey, Abstract No. 1161, City of Arlington, Tarrant County, Texas, being all of Lots 2A and 2B, Block 2, Central Plaza Addition, an addition to the City of Arlington, recorded in Cabinet A, Slide 8119, Plat Records, Tarrant County, Texas and all of the remainder of Lot 1AR, Block 1, 157 South Addition, an addition to the City of Arlington, recorded in Volume 388-128, Page 72, Plat Records, Tarrant County, Texas and being further described by metes and bounds as follows:

COMMENCING at the intersection of the east line of South Cooper Street and the north line of Secretary Drive, a 60-foot right-of-way, as shown on the revised final plat of 157 South Addition, recorded in Volume 388-95, Page 39, Plat Records, Tarrant County, Texas, from which a 5/8-inch rebar with yellow plastic cap stamped "VMA" found bears North 77°22'07" East, a distance of 0.35 feet;

THENCE along the north line of said Secretary Drive the following two (2) courses:

South 57°42'23" East, a distance of 245.00 feet to the beginning of a curve concave to the northeast;

Along said curve concave to the northeast, having a radius of 203.55 feet and a central angle of 19°28'13", a distance of 69.17 feet being subtended by a chord bearing south 67°26'35" East, a distance of 68.84 feet to a 5/8-inch rebar with yellow cap stamped "VMA" found for the southwest corner of said Lot 2B, same being the POINT OF BEGINNING;

THENCE leaving the north line of said Secretary Drive and along the west line of said Lots 2B and 2A the following seven (7) courses:

North 12°49'20" East, passing at a distance of 327.91 feet an 'X' scribed in concrete found for the northwest corner of said Lot 2B, same being the southwest corner of said Lot 2A, and continuing for a total distance of 348.45 feet to a point, from which an 'X' scribed in concrete found bears South 40°35'41" West, a distance of 0.84 feet;

South 89°50'54" West, a distance of 37.21 feet to an 'X' scribed in concrete found;

North 31°44'55" East, a distance of 202.13 feet to an 'X' scribed in concrete found;

North 89°41'53" East, a distance of 17.98 feet to a point, from which a 5/8-inch rebar with yellow plastic cap stamped "VMA" found bears North 66°46'24" East, a distance of 0.15 feet;

North 00°06'00" West, a distance of 119.57 feet to a 5/8-inch rebar found;

North 89°41'56" East, a distance of 68.29 feet to a 1/2-inch rebar with yellow plastic cap stamped "Weir & Associates" found;

North 00°37'26" West, a distance of 85.26 feet to the northwest corner of said Lot 2A, same being on the south line of Orthopedic Way (also known as Terri Lynn Street), a 50-foot right-of-way, as shown on the plat of Lots 2, 3, 4, Block 1, and Lot 1, Block 2, Central Plaza Addition, recorded in Volume 388-112, Page 65, Plat Records, Tarrant County, Texas, from which a 1/2-inch rebar found bears North 11°15'17" East, a distance of 0.16 feet;

THENCE along the north line of said Lot 2A and the south line of said the following four (4) courses:

North 89°17'45" East, a distance of 102.20 feet to the beginning of a curve concave to the northwest;

Along said curve concave to the northwest, having a radius of 225.00 feet and a central angle of 41°58'16", a distance of 164.82 feet being subtended by a chord bearing North 68°09'33" East, a distance of 161.16 to the beginning of a reverse curve concave to the southeast;

Along said reverse curve concave to the southeast, having a radius of 175.00 feet and a central angle of 41°53'43", a distance of 127.96 feet being subtended by a chord bearing North 68°30'31" East, a distance of 125.13 feet to a point;

North 89°29'29" East, a distance of 106.10 feet;

THENCE departing the north line of said Lot 2A, same being the south line of Orthopedic Way, along the east line of Lot 2A the following four (4) courses:

South 00°39'23" East, a distance of 192.40 feet to a point from which a 5/8-inch rebar found with yellow cap stamped "BHB" found bears North 14°26'53" East, a distance of 0.14 feet;

North 89°40'20" West, a distance of 103.36 feet to a point from which a 5/8-inch rebar found bears North 19°32'42" West, a distance of 0.15';

South 01°03'32" West, a distance of 119.90 feet to an angle iron cut flush with the ground found;

South 89°52'37" West, a distance of 253.75 feet to a 5/8-inch rebar with yellow plastic cap stamped "VMA" found;

THENCE along the east line of said Lot 2A South 00°19'35" East, passing at a distance of 171.41 feet, a 5/8-inch rebar with yellow cap stamped "VMA" found for the most southeasterly corner of said Lot 2A, same being the northeast corner of the remainder of Lot 1AR, Block 1, 157 South Addition, recorded in Volume 388-128, Page 72, Plat Records, Tarrant County, Texas, (described in a deed to Arlington Charities, recorded in Volume 10164, Page 1245, Deed Records, Tarrant County, Texas) and continuing along the east line of said remainder for a total distance of 346.17 feet to a 3/8-inch rebar found for the southeast corner of said remainder;

THENCE along the south line of said remainder, South 89°36'03" West, a distance of 151.77 feet to the southwest corner of said remainder, same being on the east line of said Lot 2B, from which a 3/8-inch rebar found bears South 89°36'03" West, a distance of 0.30 feet;

THENCE along the east line of said Lot 2B, South 00°20'30" East, a distance of 169.53 feet to a bent 1/2-inch rebar found for the southeast corner of said Lot 2B, same being on the north line of said Secretary Drive;

THENCE along the south line of said Lot 2B and the north line of said Secretary Drive the following two (2) courses:

South 89°40'20" West, a distance of 153.87 feet to the beginning of a curve concave to the north, from which a bent 1/2-inch rebar found bears South 79°40'01" East, a distance of 0.19 feet;

Along said curve concave to the north, having a radius of 203.55 feet and a central angle of 13°05'52", a distance of 46.53 feet being subtended by a chord bearing North 83°46'46" West, a distance of 46.43 feet to the POINT OF BEGINNING and containing 5.598 acres of land more or less.